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No. 85-

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1985

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MARATHON PETROLEUM COMPANY, MOBIL OIL CORPORATION, MURPHY OIL CORPORATION, ASHLAND OIL, INC., PENNZOIL COMPANY, TENNECO OIL COMPANY AND TOSCO CORPORATION,

*Petitioners,*

v.

UNITED STATES OF AMERICA, *et al.*,

*Respondents.*

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## PETITION FOR WRIT OF CERTIORARI TO THE TEMPORARY EMERGENCY COURT OF APPEALS OF THE UNITED STATES

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## QUESTION PRESENTED

Whether a federal court may discharge its statutory mandate to effect restitution by awarding a money judgment of two billion dollars to state governments who have made no claim or proof of loss:

(a) without first providing notice or opportunity to persons claiming loss to prove their entitlement to a portion of the restitution fund; and

(b) on a finding unsupported by record evidence and contested by persons claiming loss that it would be "futile" to look for persons actually sustaining loss.

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MARATHON PETROLEUM COMPANY, MOBIL OIL CORPORATION, MURPHY OIL CORPORATION, ASHLAND OIL, INC., PENNZOIL COMPANY, TENNECO OIL COMPANY AND TOSCO CORPORATION,

*Petitioners,*

v.

UNITED STATES OF AMERICA, *et al.*,

*Respondents.*

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## PETITION FOR WRIT OF CERTIORARI TO THE TEMPORARY EMERGENCY COURT OF APPEALS OF THE UNITED STATES

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Marathon Petroleum Company, Mobil Oil Corporation, Murphy Oil Corporation, Ashland Oil, Inc., Pennzoil Company, Tenneco Oil Company and Tosco Corporation,[1] hereby petition for a writ of certiorari to the Temporary Emergency Court of Appeals of the United States ("TECA") in this case.

## OPINION BELOW

The opinion of the court of appeals is not yet reported. The opinion of the district court appears at 561 F. Supp. 816.[2]

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[1] The lists of parent, affiliate, and subsidiary companies required by this Court's Rule 28.1 appear in Appendices VIII-XIV.

[2] The opinions of the court of appeals and the district court are contained in the Appendix to the petition for certiorari filed by

## JURISDICTION

The judgment of the court of appeals was entered on July 11, 1985. Rehearing was denied on August 15, 1985. Ex. App. 269a. This Court's jurisdiction is invoked under Section 211(g) of the Economic Stabilization Act of 1970 ("ESA"), *as amended*, Pub. L. No. 92-210, 85 Stat. 743, 12 U.S.C. § 1904 note, as incorporated by Section 5(a)(1) of the Emergency Petroleum Allocation Act of 1973, Pub. L. No. 93-159, 87 Stat. 627, 633, 15 U.S.C. § 754.

## CONSTITUTIONAL PROVISIONS, STATUTES, RULES AND REGULATIONS INVOLVED

The Fifth Amendment to the United States Constitution in pertinent part provides:

> No person shall . . . be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.

Section 209 Pub. L. No. 92-210, 85 Stat. 743 of the Economic Stabilization Act of 1970, *as amended*, 12 U.S.C. § 1904 note, as incorporated by Section 5(a)(1) of the Emergency Petroleum Allocation Act of 1973, Pub. L. No. 93-159, 87 Stat. 627, 637, 15 U.S.C. § 754, in pertinent part provides:

> Whenever it appears to any person authorized by the President to exercise authority under this title that any individual or organization has engaged, is engaged, or is about to engage in any acts or practices constituting a violation of any order or regulation under this title, such person may request the

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Exxon Corporation that seeks review of the same court of appeals decision of which review is sought here. Exxon Corp. v. United States, No. 85-——. References to those opinions herein are to that Appendix, designated by "Ex. App. ——". References to the Appendix to this Petition are designated by "App. ——."

Attorney General to bring an action in the appropriate district court of the United States to enjoin such acts or practices, and upon a proper showing a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. Any such court may also issue mandatory injunctions commanding any person to comply with any such order or regulation. In addition to such injunctive relief, the court may also order restitution of moneys received in violation of any such order or regulation.

28 U.S.C. § 2041 provides:

All moneys paid into any court of the United States, or received by the officers thereof, in any case pending or adjudicated in such court, shall be forthwith deposited with the Treasurer of the United States or a designated depositary, in the name and to the credit of such court.

This section shall not prevent the delivery of any such money to the rightful owners upon security, according to agreement of parties, under the direction of the court.

28 U.S.C. § 2042 provides:

No money deposited [under section 2041 of this title] shall be withdrawn except by order of court.

In every case in which the right to withdraw money deposited in court [under section 2041] has been adjudicated or is not in dispute and such money has remained so deposited for at least five years unclaimed by the person entitled thereto, such court shall cause such money to be deposited in the Treasury in the name and to the credit of the United States. Any claimant entitled to any such money may, on petition to the court and upon notice to the United States attorney and full proof of the right thereto, obtain an order directing payment to him.

Fed. R. Civ. P. 56(c) in pertinent part provides:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

## STATEMENT OF THE CASE

The unprecedented remedy imposed *sua sponte* by the district court and affirmed by the majority of the court of appeals would award the largest money judgment ever entered against a private firm—nearly $2 billion, including interest—to state governments for expenditure in various energy aid and conservation programs, on the basis of an unsupported finding that the persons actually injured by the overcharges could not be identified.

### A. The Basis For Imposing Liability

Granting the government's motion for summary judgment, the district court found, and the court of appeals affirmed, that Exxon had violated the domestic crude oil regulations contained in 10 C.F.R. Sections 212.73, 212.74 (1975) in overpricing crude oil produced and sold from a unitized field known as the Hawkins Field Unit ("HFU") located near Tyler, Texas. The overcharges resulted from placing volumes of crude oil in "upper tier" and "exempt" categories, for which higher prices could be charged, from January 1975 until the end of controls in January 1981. The district court found, and the court of appeals affirmed, that as operator of the HFU Exxon "had caused, and is fully liable for, the violations" and accordingly imposed liability for all overcharges arising from the violations—approximately $2 billion with interest included. Ex. App. 55a.

Petitioners do not challenge the finding of liability. Indeed, petitioners believe that they were damaged by these overcharges and have sought, but have been denied,

the opportunity to prove it. Petitioners limit their petition for certiorari to questions involving the remedy.

### B. The District Court's "Stay" Of Applications To Intervene

Although the United States filed suit on June 8, 1978, the remedy issue was not briefed by either party until September 1, 1982 and briefing was not completed until October 6, 1982. In that briefing the United States urged the district court to order payment of the judgment into the U.S. Treasury without first conducting a remedial proceeding to ascertain who had been injured by the HUF overcharges. For this reason, petitioners Pennzoil Company, Tenneco Oil Company, Ashland Oil, Inc., and Tosco Corporation applied conditionally to intervene in the district court on November 24, 1982, seeking to be heard on remedy questions.[3] On December 15, 1982, the district court stayed consideration of these requests, ordering that "there shall be no filing of briefs *amicus curiae* or responses thereto by the potential intervenors or the parties, respectively, concerning remedial issues *until further order of this court.*" App. 4a (emphasis added). Petitioners Marathon, Mobil and Murphy had

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[3] On December 5, 1980, Exxon had filed a Petition and Counterclaim for Interpleader and Declaratory Relief requesting that Mobil and Tosco, along with other purchasers of Hawkins Field crude oil and certain other working interest and royalty interest owners in the Hawkins Field, be interpled as defendants because of the competing nature of their claims and the claims of DOE to the alleged overcharges. On February 5, 1981, the district court *sua sponte* deferred the presentation and consideration of the interpled parties' claims "until a later time," if and when Exxon's liability for the overcharges was established. App. 3a. The district court ordered the defendants named in Exxon's Interpleader Petition, including Mobil and Tosco, to "answer or otherwise respond within 20 days from the date of service of notice by this Court that such answers or other responses shall be filed." App. 3a. No such notice was ever given and the stay of the interpleader action was never lifted, nor was it even addressed in the final decision of the district court or the majority opinion below.

actively considered intervention, but were dissuaded by the district court's order of December 15. The district court thus led petitioners to believe that it would provide notice and a hearing to potential claimants before the remedy issue would be decided. However, on March 25, 1983, the district court issued its summary judgment on both liability and remedy without ever entering a "further order" giving notice to potential claimants or providing opportunity for claims of injury to be heard. In a brief footnote, the district court denied the motion of petitioners Ashland, Pennzoil, Tenneco and Tosco to intervene. Ex. App. 249a-250a n.56.

**C. The Basis Of The District Court's Remedy**

The district court held, and all parties agreed, that the burden of the HFU overcharges was initially spread by the purchasers of the HFU crude oil to all refiners by means of the Entitlements Program. 10 C.F.R. § 211.67 (1975).[4] However, the district court went further and assumed, without any record evidence, that refiners still were not injured because the DOE price controls covering sales of refined products by refiners (10 C.F.R. § 212.83) permitted refiners to pass on their increased post-entitlement crude costs attributable to the HFU

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[4] Ex. App. 247a. Almost all domestic crude oil is ultimately purchased by refiners for refining into petroleum products. The Entitlements Program was intended to equalize the benefits of access to price-controlled domestic crude oil by requiring refiners with greater than average access to such oil to purchase entitlements from refiners with less than average access, thereby roughly equalizing the cost of all crude oil refined in the United States. *See* Union Oil Company of California v. Department of Energy, 688 F.2d 797 (TECA), *cert. denied*, 459 U.S. 1202 (1983); Pasco Inc. v. Federal Energy Administration, 525 F.2d 1391, 1395 (TECA 1975). As the direct result of misclassification of crude oil from the HFU, the amount of price-controlled crude oil reported to the Entitlements Program was decreased, and the pool of price-controlled crude to be spread among all refiners was diminished, raising each refiner's post-entitlement cost of crude oil. Ex. App. 87a.

overcharges in refined product sales. The district court further assumed that because this passthrough could occur, it did occur at all levels of the industry, so that the "ultimate consumer" bore all of the cost of the HFU overcharges. But the district court failed to account for the fact (perhaps through ignorance caused by its failure to accept briefing from interested parties) that most refined products—including diesel fuel, home heating oil, boiler fuel (called "residual fuel oil"), jet fuel and asphalt—were not subject to price controls at virtually all relevant times. (*See* footnote 19, *infra.*) Thus, the court's conclusion that a regulatory control mechanism operated to effectuate cost passthrough in sales of these products was erroneous.

Moreover, whether any HFU overcharges were in fact passed through by refiners to their customers even in sales of controlled products is a disputed issue of material fact. DOE's regulations did not set prices that had to be charged. Rather, they set maximum prices only, based on refiners' costs, including costs of crude oil. Market forces could and generally did cause refined products to sell below the maximum price. Thus it is not clear that the HFU overcharges, which raised refiners' crude oil costs and therefore raised their maximum prices for controlled products, meant that a refiner would charge a higher actual price for a controlled product. These issues were expressly raised in Exxon's opposition to the United States' motion for summary judgment.[5]

The district court then found, without evidence, that overcharges borne by each "ultimate consumer" could not

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[5] Indeed, the United States carefully refrained from arguing that all HFU overcharges were borne by ultimate consumers, conceding that "all domestic refiners, resellers, retailers and consumers were overcharged as a consequence of Exxon's violations." Brief of Plaintiff United States in Support of Summary Judgment in the district court at 151-152. Thus, the United States conceded that refiners, like petitioners, were one group among several that sustained overcharges.

be ascertained. The judgment directed Exxon to pay the full amount of the HFU overcharges plus interest to the federal Treasury for deposit to an escrow account, to be distributed to the states as additional money available using the Warner Amendment mechanism.[6] This was an idea of the court, not suggested by any party. App. 9a. The Warner Amendment was an otherwise inapplicable statute under which Congress had earlier made a one-time-only appropriation of $200 million (a tenth of the amount at issue here) in funds collected by the DOE in consented settlements of EPAA enforcement proceedings. Congress required the states to expend these funds for five energy assistance programs whose designated beneficiaries consist primarily of hospitals, public schools and low income families.[7]

The district court did not purport to find that the intended beneficiaries of the judgment remedy had in fact sustained any of the HFU overcharges. Rather, the district court invoked "broad equitable power to order restitution" which it asserted was not limited "to a particularly strict interpretation of restitution." Ex. App. 256a. The district court asserted that the remedy would serve the purpose of the price regulations "to relieve consumers of some of the burden of towering oil costs . . . . either by reducing overall consumption through conservation or by direct financial assistance to those most in need." Ex. App. 257a. On this basis alone, the district

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[6] Section 155 of Pub. L. No. 97-377, 96 Stat. 1830, 1919 (1982).

[7] The designated programs were: Weatherization Assistance Program for Low Income Housing, 42 U.S.C. § 6861, *et seq.*; State Energy Conservation Plans, 42 U.S.C. § 6321; Energy Conservation Program for Schools and Hospitals, 42 U.S.C. § 6371; Energy Extension Service, 42 U.S.C. § 7001; Low Income Home Energy Assistance, 42 U.S.C. § 8621. As Judge Becker noted in dissent in the court of appeals (Ex. App. 157a-166a), the states' distribution of the Warner Amendment funds was criticized by the General Accounting Office for failing to conform to accounting procedures that would insure that the funds were properly spent.

court asserted that its remedy was "the most appropriate remedy in the circumstances of this case." *Id.*

On April 6, 1983, petitioners Ashland, Tosco, Tenneco and Pennzoil, among others, moved for reconsideration of the district court's denial of their motion to intervene. On April 11, 1983, the district court granted in part the motion for reconsideration and permitted those petitioners to intervene as a matter of right solely to appeal the remedy issues. App. 5a.

On April 14, 1983, petitioners Marathon, Mobil and Murphy moved to intervene as a matter of right, urging the district court to reconsider its erroneous factual findings on the impact of the overcharges and the lack of factual and legal basis for the judgment remedy, and alternatively seeking intervention for appeal. On April 29, 1983, the district court granted these petitioners' motion to intervene and retailers' similar motions, but solely to appeal the judgment remedy described in the opinion. App. 6a, 11a. The court did not conduct further proceedings on the disputed factual issues underlying the remedy before entering final judgment on June 7, 1983, adopting without substantive alteration the Warner Amendment remedy described in its opinion.

### D. Proceedings In The Court Of Appeals

The court of appeals majority upheld the district court remedy even though it declined to endorse the district court's conclusion that ultimate consumers had, in fact, borne all overcharges. The majority based its affirmance exclusively on the rationale "that any attempt to trace increased costs atributable to the HFU overcharges . . . would be futile." Ex. App. 88a. The majority also held that the district court had been correct in arriving at its decision without granting intervention to persons claiming injury. Without elaboration, the majority then affirmed the remedy as "a reasonable method of com-

pensating the consuming public for the HFU overcharges." Ex. App. 91a.

There was, of course, no evidentiary support for this conclusion either. The court of appeals held that the initial burden of HFU crude oil overcharges had been spread among refiners by the Entitlements Program. However, the majority, while holding that the DOE price control "regulatory system" permitted refiners "to pass through increased costs to their customers" (Ex. App. 87a), also ignored the fact that most refined products were decontrolled. Therefore, most of the "regulatory system" relied on by the majority as effecting passthrough simply did not exist. As to controlled refined products, the majority seemed to admit that refiners might not have been permitted by the marketplace to use control mechanisms to pass the increased costs through to customers, but held that this was impossible to prove. Ex. App. 89a.

In a lengthy dissent, Judge Becker took exception to the affirmance of the district court remedy. Relying principally upon this Court's decisions in *Porter v. Warner Holding Co.*, 328 U.S. 395 (1946), *United States v. Morgan*, 307 U.S. 183 (1939), *Federal Power Commission v. Interstate Natural Gas Co.*, 336 U.S. 577 (1949) and *Central States Electric Co. v. Muscatine*, 324 U.S. 138 (1945), Judge Becker faulted the district court for failing to discharge its responsibility to dispose of the fund created by its decision in accordance with law. Ex. App. 94a-110a. *"That responsibility plainly cannot be discharged by payment of the fund to those who show no loss . . . ."* *Interstate Natural Gas, supra*, 336 U.S. at 582 (emphasis added in dissent; Ex. App. 101a-102a).

Judge Becker criticized the district court for its failure even to permit good faith claimants to the overcharge fund to intervene in the case prior to the imposition of a remedy. Ex. App. 128a ff. Noting that petitioners and others were granted intervention as a matter of right following entry of judgment (App. 6a), he con-

cluded that even the district court had recognized that petitioners were real parties in interest. He reasoned that the failure of the district court to notify potential claimants and afford them a hearing on their claims deprived them of a due process right (Ex. App. 122a ff.) and contravened the policies underlying Fed. R. Civ. P. Rules 19 and 24 requiring joinder and intervention as of right of parties asserting a claim or interest in funds controlled by the court. *See also* App. 9a.

Judge Becker further criticized the district court conclusion, relied upon by the majority in affirming the remedy, that it was impossible to identify the victims of the overcharges. In Judge Becker's words "[n]o proof exists in the record to support this factual conclusion; nor is any supporting proof cited by the District Court." Ex. App. 143a-144a. At a minimum, Judge Becker reasoned, the district court ignored the requirement of Fed. R. Civ. P. 56 that summary judgment be based on record evidence and the absence of a material disputed issue of fact. Thus, "[t]he District Court did in fact, if not in name, issue an unauthorized summary judgment on restitution issues, made easier by the limitations on the scope of intervention, the time of intervention and the stay of the interpleader issues, all without hearing those claiming to be victims of the violations of law by Exxon." Ex. App. 145a. Accordingly, Judge Becker would have remanded the remedy issue for the development of a record, after notice and hearing, on which a proper award of restitution could be based. Ex. App. 168a.

Petitions for rehearing were timely filed and denied without comment by the court of appeals on August 15, 1985. Ex. App. 269a.

## REASONS FOR GRANTING THE PETITION

The judgment in the present case awards $2 billion as "restitution" and sets a precedent for disposition of very large sums in other cases (see footnote 8). In affirming

the award of this vast sum, the Temporary Emergency Court of Appeals departed from its own precedent, ignored controlling decisions of this Court and other courts of appeals concerning substantive and procedural rights of persons claiming injury, and also permitted state governments, who neither claimed nor established injury, to receive the funds. The size of the judgment, the utter disregard of controlling precedent, and the unprecedented nature of the award all merit review by this Court.

In Section 209 of the Economic Stabilization Act Congress mandated that courts apply the familiar concept of restitution that this Court and other courts had previously used in effecting a remedy in similar cases arising from price overcharges. *Porter, supra*; *Morgan, supra*; *Central States, supra*; *Interstate Natural Gas, supra.* Under those decisions, the court must provide notice and an opportunity for parties claiming injury to be heard, the fund must be held in court for a reasonable time to permit claimants to come forward, and the sums must be paid to injured persons or held in the Treasury pursuant to 28 U.S.C. § 2041-2042. Payment to persons not injured by the overcharges does not constitute restitution. *Interstate Natural Gas, supra.*

The court of appeals violated every one of those controlling doctrines in the present case. It affirmed a decision in which the district court had actively excluded and discouraged the intervention of persons claiming injury. Thus losing the benefit of their evidence and views, the court of appeals held without any record that it would be impossible to identify and make restitution to any injured persons. Rather than permit anyone to try, the court of appeals made the wholly legislative determination, again without any record at all, that it was "equitable" for state governments to receive the money so that they could spend more on certain programs for which Congress had once designated other, much lesser, sums to be spent. There was no precedent, finding, or evidence of injury to support this remedy.

Nor did the court of appeals provide any legal rationale for its decision. Despite a lengthy dissent analyzing controlling and contrary decisions from this Court, the Temporary Emergency Court of Appeals and other courts of appeals, to say nothing of the extensive briefing and petitions for rehearing, the majority contented itself with the single *ipse dixit* that the district court "unquestionably" possessed the authority to order this remedy. Ex. App. 92a. Moreover, the majority's attempt to explain why it would be impossible to prove injury is seriously inaccurate and simply ignores the most important assertion made by petitioners.

The result approved by the court of appeals is particularly disturbing because of the unusual roles played by the federal and state governments. They have not pursued their traditional function of assisting injured persons to obtain restitution and of serving as custodian of the funds until either injured persons establish claims or the funds escheat under appropriate procedures. Rather they have become claimants themselves, actively asserting that no actually injured person can prove injury and that the money should go to their respective treasuries, on the questionable assertion that payment to the government is the same thing as payment to the government's injured citizens. There is no support for this result in the statute or its history.

Although the federal government lost this unseemly battle to the states in the district court, and withdrew its notice of appeal on this issue, it has recently announced its "policy", duly published in the Federal Register, that given the result in the present case and one other, the states have now received enough and that the federal Treasury, rather than the states, will from now on receive "restitution" instead of injured persons.[8] As a claimant,

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[8] Policy Statement signed by the Deputy Secretary of Energy, 50 Fed. Reg. 27400, 27402, col. 3 (July 2, 1985). Mentioned in the

the federal government pursues an interest that is quite different from that of an even-handed administrator trying to establish and administer a workable program, to find those injured by violations of that program, and to compensate them. Rather its interest, and the course it has pursued here, is to complicate and obscure the issues so that it, rather than persons injured, will end up with the money. Whether, absent explicit statutory authority, either federal or state governments may ever assume such an active claimant's role is an unprecedented question of great importance that alone merits certiorari. This case should be reversed to preclude its use as precedent both in other large cases under the EPAA and in other areas where the government conducts economic regulation.

## I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S HOLDINGS DEFINING RESTITUTION AND HOLDING THAT A FEDERAL COURT MAY NOT DISTRIBUTE A COURT CREATED FUND WITHOUT PROVIDING NOTICE AND AN OPPORTUNITY TO BE HEARD TO POTENTIAL CLAIMANTS

In affirming the district court remedy, the majority of the court of appeals ignored both the substantive and procedural requirements for effectuating restitution of a court created fund that were articulated in *Porter*, *supra*, 328 U.S. at 398, 402. When awarding restitution, a federal court "act[s] in the public interest by restoring the status quo and ordering the return of that which rightfully belongs to the purchaser or tenant." The court

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"Policy Statement" as cases affected by it are United States v. Sutton, —— F.Supp. —— (N.D. Ok. September 14, 1984), TECA Nos. 10-57, 10-58 (appeals docketed October 12, 1984) ($210 million not including interest) and in re: Department of Energy Stripper Well Exemption Litigation, D. Kan., MDL No. 378 ($1.2 billion including interest). There are a number of other cases with similar amounts at issue as to which remedy questions have not been litigated.

"may act so as to adjust and reconcile competing claims and so as to accord full justice to all the real parties in interest; if necessary, persons not originally connected with the litigation may be brought before the court so that their rights in the subject matter may be determined and enforced." *Id.*[9]

### A. The Remedy Approved By The Court Of Appeals Does Not Constitute Restitution As Defined By This Court

The district court remedy purports to implement Section 209 of the ESA, which authorizes the court to "order *restitution* of moneys received in violation of any . . . regulation." 12 U.S.C. § 1904 note (emphasis added). Added as an amendment to the ESA in 1971, the provision confirmed the "inherent equitable power in the court to set things right and order restitution." S. Rep. 92-507, 1971 U.S. Code Cong. & Ad. News 2283, 2291. By restitution, Congress meant the refund of overcharges to the party injured, as indicated by the case cited with approval in the legislative history to the amendment. *Id.* citing *United States v. Lieb*, 333 F. Supp. 424 (W.D. Tex. 1971), *aff'd*, 462 F.2d 1161 (TECA 1972) (ESA § 209 authorizes agency to order refund of excess rent to tenant).

The traditional limits of restitution have been fully addressed by this Court in similar contexts. Restitution does not permit a payment of overcharges to parties that have made no proof of injury. In construing a comparable remedial provision in the Emergency Price Control Act of 1942, this Court held that when the agency seeks restitution it "asks the court to act in the public interest by restoring the status quo and ordering

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[9] *Porter* restates the long established principle that "[c]ourts of equity require, that all the parties concerned in interest shall be brought before them, that the matter in controversy may be finally settled." Elmendorf v. Taylor, 23 U.S. (10 Wheat.) 152, 166 (1825) (Marshall, C.J.)

the return of that which rightfully belongs to the purchaser or tenant." *Porter, supra,* 328 U.S. 395, 402.[10] Under equitable principles, restitution means payment to a person who was injured by the wrongful act. "That responsibility [to make restitution] cannot be discharged by payment of the fund to those who show no loss . . . ." *Interstate Natural Gas, supra,* 336 U.S. at 582.

The remedy upheld by the majority is not restitution within the meaning of ESA Section 209 or this Court's decisions.[11] It does not rest on any evidentiary support for the conclusion that ultimate consumers generally were the victims of the HFU overcharges, and it certainly does not rest on any record evidence that the intended beneficiaries of the district court's remedy sustained any overcharges.

Nor was it necessary for the district court or the court of appeals to have created a remedy. Congress has provided a procedure, in 28 U.S.C. §§ 2041, 2042 for those situations where entitlement to a fund in court is not clear after litigation. Under that procedure, in cases indistinguishable from the present, the amount is paid into court, and any claimant may make application for

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[10] *See* also Restatement of Restitution, § 1 and accompanying comments, and Introductory Note to Chapter 7 (at 522) where restitution is defined as "restoring to a person property transferred by him to another . . . It implies both a loss by him and a receipt of something by another."

[11] Until this case, TECA appeared to have construed Section 209 to require restitution by means closer to the traditional sense. Citronelle-Mobil Gathering, Inc. v. Edwards, 669 F.2d 1717, 723, *cert. denied,* 459 U.S. 877 (1982). In *Citronelle,* TECA vacated a district court remedy that purported to equate payment of overcharges to the U.S. Treasury with restitution, and recognized "that the Government has a *duty* to try to ascertain those overcharged, and refund them, with interest, from the restitution funds." *Id.* (emphasis in original). Moreover, the court held that pending location of injured persons, the money should be held in court pursuant to 28 U.S.C. §§ 2041, 2042. *Id.* at footnote 6.

it. The money must go to the Treasury after five years, although even then if a valid claim appears it must be paid. *In re: Folding Carton Antitrust Litigation*, 744 F.2d 1252, 1255, 1259-60 (7th Cir. 1984); *Marshall v. Quik-Trip Corp.*, 672 F.2d 801, 807-8 (10th Cir. 1982); *Donovan v. University of Texas*, 643 F.2d 1201, 1208 n.16 (5th Cir. 1981); *Hodgson v. Y.B. Quinada*, 498 F.2d 5, 6 (9th Cir. 1974); *Hodgson v. Wheaton Glass Co.*, 446 F.2d 527, 535-36 (3d Cir. 1971); *Panhandle Eastern Pipe Line Co. v. Federal Power Commission*, 179 F.2d 896, 900-901, 903 (8th Cir. 1950) (en banc). *See Van Gemert v. Boeing Co.*, 739 F.2d 730, 733-736 (2d Cir. 1984). Such funds may go to a state only after escheat proceedings. *United States v. Klein*, 303 U.S. 276, 279-283 (1938); *In re Folding Carton Antitrust Litigation*, *supra*; *Panhandle Eastern*, *supra*.

In this case the court of appeals majority, at the urging of federal and state governments, departed from this line of cases and created different, non-statutory rights for these governments. Instead of being custodians and receiving the money only after it is definitively clear that no claimant for it will succeed, they become claimants themselves, seeking to defeat, rather than to assist, claims of injury by private persons. In the present case, for example, the government argued, and the court of appeals agreed, that a claimant of injury would have to meet a very steep burden of proof. Ex. App. 90a. Conveniently for the government, the difficult burden of proof to establish private injury makes it all the easier for the government to get the money.[12]

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[12] Here the government benefits from its role as expert agency in its role as claimant. Of course it is not fair to require strict proof from an injured party of precisely what would have happened if the injury had not occurred where the fact of the injury makes that precision impossible. *See, e.g.*, Eastman Kodak Co. v. Southern Photo Materials Co., 273 U.S. 359, 379 (1926). The court of appeals has done just that, with the dual results of making it easier for the state or federal governments to prevail and of supporting the

A court should base a remedy on adjudicated facts. The terms "equity," "restitution," "reasonable" and "discretion" are not a license to do otherwise. Once a court assumes a roving commission to divorce a remedy from the liability found, no guidelines remain to control the court's largesse with funds rightfully belonging to wronged parties.[13] The General Accounting Office has sharply criticized the agency for arrogating what are essentially legislative powers in fashioning remedies to uninjured parties in administrative actions.[14] The same criticism applies here.[15]

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court of appeals' finding that it is "futile" to identify injured persons. *Cf.* Hanover Shoe, Inc. v. United Shoe Machinery Co., 392 U.S. 481 (1968).

[13] In fact, the district court remedy is the antithesis of the responsible exercise of equitable power. It disregards principles underlying Hawaii v. Standard Oil Co. of California, 405 U.S. 251, 264 (1972), where the Court reasoned that a state-based *parens patriae* right of action, combined with U.S. government enforcement powers and an individual right of action by every overcharged party would "open the door to duplicative recoveries." No such recovery is to be allowed absent "a clear expression of congressional purpose to make it so." *Id.* Although the states have no *parens patriae* cause of action under the EPAA, the district court has, nonetheless, invested them with a *parens patriae* capacity to oversee the distribution of the largest money judgment ever entered. In doing so, the district court has placed the states in an adversary position to numerous overcharged parties who are also among their citizens. Moreover, because the EPAA also incorporates a private right of action contained in ESA § 210, the award of the judgment to parties without injury opens the door to a second recovery under § 210 by the parties actually sustaining injury.

[14] *See* Hearing before the Committee on Energy and Power of the Committee on Interstate and Foreign Commerce, House of Representatives, 96th Cong., 2d Sess., on Settlements By the Department of Energy on Overcharges Within the Petroleum Industry (October 14, 1980) p. 2. The GAO's analysis is set forth in the three opinions: B-200170 (October 10, 1980); B-200170 (April 1, 1981); B-209600 (May 19, 1983).

[15] *See, e.g.*, City of Philadelphia v. American Oil Co., 53 F.R.D. 45, 71 (D.N.J. 1971). The use of so-called fluid recovery doctrines

And, in fact, the remedy chosen in this case represents a serious incursion on the Constitutional powers of Congress to appropriate funds for its own programs. The district court ignored the intent of Congress that the Warner Amendment be a one-time-only distribution from consent order funds.[16] Its remedy will contribute ten times the amount of funding to the designated energy programs that Congress deemed appropriate in its one-time-only authorization. Whether to extend an act of Congress beyond the limits that Congress itself set is not a determination that should or can properly be made by a court.

### B. The Court Of Appeals Ignored Procedural Safeguards Compelled By This Court's Decisions

Apart from this complete departure from statutory and decisional demands concerning the substance of restitution, the court of appeals approved a complete departure from procedural safeguards required by fifth amendment due process as specifically interpreted by this Court. The district court did not even permit real parties in interest to present their claims. Rather, by staying two

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to justify departure from traditional limits on a court's remedial powers has been advocated and criticized in the academic literature. *Compare* Nash, Collecting Overcharges from the Oil Companies: The Department of Energy's Restitutionary Obligation, 32 Stanford Law Review 1039 (May 1980) *with* Durand, An Economic Analysis of Fluid Class Recovery Mechanisms, 34 Standard Law Review 173 (November 1981).

[16] See remarks of Senator Warner, the amendment's sponsor at 128 Cong. Rec. 15116 (December 16, 1982) (daily ed.) and Representative Dingell, Chairman of the House Subcommittee on Energy and Power, 128 Cong. Rec. 10435 (December 20, 1982) (daily ed.) Representative Dingell emphatically stated:

> The provision is a one-time provision. It should not be viewed as a precedent. It does not confer on DOE any new restitutional or remedial authority or imply that the DOE has such authority. It is a very limited provision aimed at helping people. It is, I stress, an exclusive, one-time disbursement authority.

applications for intervention until the remedy issue had been decided, by failing to notify all potential claimants, and by failing to conduct a hearing on the appropriate distribution of the fund created by the judgment, the district court effectively denied potential claimants to the HFU overcharges any opportunity to be heard on the merits of their claims. The court of appeals approved this holding. That conclusion cannot be reconciled with *Central States, supra*, 324 U.S. at 146, in which this Court held that a fund in court that is subject to restitution to injured persons who are not initially parties must "be held for a reasonable time to permit interested persons to litigate the issue in a tribunal having jurisdiction . . . ."

The court of appeals majority excuses this lapse on the theory that actual overcharges are incapable of judicial proof. Ex. App. 86a-88a. But that "finding" is pure speculation. The court is hardly in a position to know whether proof is possible before giving injured persons an opportunity to submit it. In *Interstate Natural Gas* Justice Frankfurter effectively disposed of an identical claim:

> Various obstacles are conceived to stand in the way of the lower court's fulfillment of this task. But it is, to say the least, premature to conjure up abstract difficulties which, as a practical matter, may evaporate in the light of the informed advice which these various regulatory agencies may be able to furnish readily on the basis of their available records of the financial condition of the utilities subject to them.

336 U.S. at 589-590 (concurring opinion). Of course Justice Frankfurter assumed that regulatory agencies would not themselves be claimants urging that the burden of proof was so great that only the government should be permitted to receive the money. With the DOE firmly told that the federal Treasury is not a proper claimant,

it should be possible for the government to discharge its appropriate duty.[17]

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[17] The DOE's Office of Hearings and Appeals (which is not autonomous and does not employ administrative law judges) has administered a regulatory procedure for distribution of overcharge funds collected in settlement of agency enforcement proceedings. *See* 10 C.F.R. § 212 Subpart V (1981). *See also*, Ashland Oil Inc. v. Department of Energy, 760 F.2d 298 (TECA 1985) which describes the Subpart V procedure. Implementing these regulations, OHA has in fact identified injured parties and directed some refunds to be made. However, as noted in the dissent (Ex. App. 156a ff.), the General Accounting Office has criticized DOE for not utilizing these procedures to distribute all overcharge funds. The difficulty, we submit, is that as long as the federal government expects to end up with the funds itself, it will never vigorously pursue identification and compensation of injured parties.

In one very large case, the district court for the District of Kansas referred for fact finding the task of ascertaining the parties injured as the result of an injunction issued in *In re*: Department of Energy Stripper Well Litigation, 578 F. Supp. 586 (D. Kan. 1983). In the referral proceeding, which involves over $1.2 billion including interest, OHA has determined that the overcharges to certain levels of distribution can be proven in approximate amounts. Ex. App. 139a. DOE says the failure to make a more precise determination proves its point that injury cannot be specified precisely. DOE "Policy Statement," 50 Fed. Reg. 27400 (July 2, 1985). But it was—conveniently—in the federal government's financial interest for DOE to find it impossible for others to prove injury, and thus that finding is questionable. *See* Tumey v. Ohio, 273 U.S. 510, 532 (1927). Nonetheless, the determination reached by OHA in Subpart V proceedings and the findings made on referral in the *Stripper Well* case squarely refute the district court finding, affirmed by the majority, that overcharges are utterly incapable of proof.

## II. THE DECISION BELOW CONFLICTS WITH THIS COURT'S HOLDINGS THAT A SUMMARY JUDGMENT REMEDY MAY NOT BE SUSTAINED WHEN A DISPUTED ISSUE OF MATERIAL FACT REMAINS, AND IN THE TOTAL ABSENCE OF SUPPORTING RECORD EVIDENCE

As the dissent noted, the cases supporting the conclusion that the district court was without power to render summary judgment on the remedy issue "on its own initiative, without hearing" and on the basis of the disputed factual conclusion that those who sustained HFU overcharges cannot be identified "are too numerous to list and discuss . . . ." Ex. App. 144a. Summary judgment on such a record contravenes Fed. R. Civ. P. 56. *Kennedy v. Silas Mason Company*, 334 U.S. 249, 256-257 (1948). "[S]ummary procedures, however salutary where issues are clear-cut and simple, present a treacherous record for deciding issues of far-flung import, on which this Court should draw inferences with caution from complicated courses of legislation, contracting and practice." [18]

Had they not been precluded from establishing their claims by the district court's stay and order, petitioners would have established that: (1) ultimate consumers could not have borne any HFU overcharges reflected in sales of decontrolled petroleum products; and (2) sufficient economic data exist to demonstrate that refiners as a class absorbed at least an identifiable percentage of the overcharges associated with controlled products.

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[18] The Advisory Committee Note to the 1963 Amendment to Fed. R. Civ. P. 56 expressly states that "[w]here the evidentiary matter in support of the motion does not establish the absence of a genuine issue, summary judgment must be denied even if no opposing evidentiary matter is presented."

*Decontrolled products.* The crude oil cost regulations could not have served to transfer the impact of *all* HFU overcharges to ultimate consumers because approximately half the sales volume of petroleum products refined from crude oil were exempt from those regulations during most of the time at issue.[19] Because the regulations required crude oil costs to be allocated between exempt and controlled products, even in theory a refiner could only utilize the regulations (assuming favorable market conditions) to pass on a proportionate amount of its share of HFU crude oil overcharges in sales of the controlled products. Neither the district court nor the court of appeals has addressed this argument which, by itself, completely undercuts the factual predicate of a remedy designed solely to benefit so called ultimate consumers.[20]

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[19] Residual fuel oil was decontrolled by the DOE's predecessor, the Federal Energy Administration (FEA), effective June 1, 1976. 41 Fed. Reg. 13896 (April 1, 1976). Middle distillates (No. 2 heating oil, No. 2 diesel fuel, No. 1 heating oil, No. 1 diesel fuel, and kerosene) were decontrolled by FEA effective July 1, 1976. 41 Fed. Reg. 24516 and 24518 (June 16, 1976). Naphthas, gas oils and "other products" were exempted effective September 1, 1976, 41 Fed. Reg. 30096 (July 22, 1976). Naphtha jet fuel was exempted effective October 1, 1976. 41 Fed. Reg. 40451 (September 20, 1976). Kerosene-base jet fuel and aviation gasoline were decontrolled by DOE effective February 26, 1979. 44 Fed. Reg. 7070 (Feb. 5, 1979); 44 Fed. Reg. 12634 (March 8, 1979). Butane and natural gasoline were decontrolled effective January 1, 1980. 44 Fed. Reg. 70118 (December 6, 1979).

[20] The percentage of HFU overcharges that could not be passed on by means of the regulatory mechanism was roughly equal to the percentage of total petroleum products exempted from price controls. For example, from July 1, 1976 until January 27, 1981, residual fuel oil and middle distillates (i.e., diesel fuel and home heating oil) accounted for about 30% by volume of all domestic refinery production. *Energy Data Reports: Petroleum Statement, Monthly,* Prepared for the Office of Oil and Gas Statistics of DOE. From July 1, 1976, a date when both of these categories of products were exempt, until January 27, 1981, Exxon incurred $688,520,768.03 in overcharges. *See* 561 F. Supp. at 860, Appendix I. At least

*Controlled products.* In declining to afford petitioners an opportunity to prove the amount of HFU overcharges absorbed rather than passed through in sales of controlled products, the district court concluded, and the court of appeals affirmed, that the task of proving the incidence of injury was impossibly complex.[21] However, as the dissent noted, the district court reached this conclusion without an evidentiary record and in the face of judicially noticeable proceedings in which the incidence of overcharges had in fact been determined with adequate precision. Ex. App. 126a. As this Court has held in analogous regulatory contexts, the calculation of overcharges is "an informed judgment by the federal court and should have the flexibility and dispatch which characterize the administrative process." *Interstate Natural Gas, supra,* 336 U.S. at 584.

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30 percent of these overcharges to refiners could not have been passed on to purchasers in the regulated sales of price-controlled refined products, because they were attributable to the exempt products of residual fuel oil and middle distillates. In other words, about $209,824,645.00 of these overcharges and $222,031,042.00 of the interest are attributable to sales of these two exempt products alone. No factual or legal basis exists for claiming that DOE price regulations resulted in the passthrough of these costs by refiners to consumers.

[21] Had the district court or the appellate court majority applied the principles of this Court's decisions in Hanover Shoe, Inc. v. United Shoe Machinery Co., 392 U.S. 481 (1968) and Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977) as TECA had in Eastern Airlines Inc. v. Atlantic Richfield Co., 609 F.2d 497 (TECA 1979), the impossibility of proving the absorption or pass on of overcharges in transactions subsequent to the first purchases would have required the entire restitutionary award to be made to the first purchaser unless a showing was made that a subsequent purchaser had a fixed quantity cost plus contract or its functional equivalent.

## CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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# APPENDICES

## APPENDIX I

**List and Status of Parties in the Appellate Court as required by Rule 34.1(b)**

UNITED STATES OF AMERICA, Plaintiff-Appellee,

STATES OF ALABAMA, ARKANSAS, CALIFORNIA, et al., Intervenor-Appellees,

EXXON CORPORATION, Defendant-Appellant; (No. DC-93)

NATIONAL OIL JOBBERS COUNCIL and the JOBBERS' GROUP, Intervenor-Appellants; (No. DC-91)

GLADIEUX REFINERY, INC., Intervenor-Appellants, (No. DC-92)

INDICATED REFINERS, Champlin Petroleum Company, Ashland Oil, Inc., Tenneco Oil Company, American Independent Refiners Association, Pennzoil Company, and Texas City Refining, Inc., Intervenor-Appellants, (No. DC-94)

GASOLINE RETAILERS, Luther Griffin, t/a Palmer Highway Exxon, Edward McGovern, t/a Maple Avenue Exxon, Anthony Monaco, t/a Milltown Exxon Servicecenter, Inc., Donald E. Skilling, t/a Edon Service Corp., Tex Shipley, t/a Shipley's Standard Service, Intervenor-Appellants; (No. DC-95)

TOSCO CORPORATION, Intervenor-Appellant; (No. DC-96)

PHILADELPHIA ELECTRIC COMPANY, Intervenor-Appellant; (No. DC-97)

AIR TRANSPORT ASSOCIATION OF AMERICA, Intervenor-Appellant; (No. DC-98)

GERALDINE H. SWEENEY, RJG CAB, INC., NATIONAL FREIGHT, INC., Intervenor-Appellants; (No. DC-99)

MARATHON PETROLEUM COMPANY, MOBIL OIL CORPORATION, and MURPHY OIL CORPORATION, Intervenor-Apellants; (No. DC-100)

## APPENDIX II

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Civil Action No. 78-1035

UNITED STATES OF AMERICA,
*Plaintiff,*

v.

EXXON CORPORATION,
*Defendant.*

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Filed Feb. 5, 1981

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### ORDER

This matter is before the court *sua sponte*. It appears that the prosecution of defendant Exxon Corporation's Petition and Counterclaim for Interpleader and Declaratory Relief, which interpleads over 2000 parties, may result in substantial administrative burdens being imposed on the parties and the court. It further appears that the government's theory of operator liability, which underlies Exxon's Petition and Counterclaim, may be found to be inappropriate in a case currently pending before the Temporary Emergency Court of Appeals, *Sauder v. DOE*, appeal docketed, No. 10-25 (May 22, 1980). It further appears that, regardless of the decision in *Sauder v. DOE*, Exxon's motion to dismiss may then be ripe for disposition by this court. Thus, it is not yet clear that Exxon's interpleader action need now proceed, inasmuch as it is possible (although the court expresses

no opinion as to the relative likelihood) both that the impetus behind Exxon's petition and counterclaim may be removed, and that this case may be dismissed. Therefore, rather than addressing at this time the administrative problems resulting from Exxon's petition and counterclaim, the court finds it advisable to extend the time within which the interpled parties must respond to Exxon's petition and counterclaim. In this way, the court will defer consideration and resolution of the administrative problems until a later time. Therefore, in accordance with the foregoing, it is, by the court, this 5th day of February, 1981,

ORDERED that all defendants in Exxon Corporation's Petition and Counterclaim for Interpleader and Declaratory Relief shall answer or otherwise respond within 20 days from the date of service of notice by this court that such answers or other responses shall be filed.

/s/ Thomas A. Flannery
United States District Judge

## APPENDIX III

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Civil Action No. 78-1035

UNITED STATES OF AMERICA,
*Plaintiff,*

v.

EXXON CORPORATION,
*Defendant.*

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[Filed Dec. 15, 1982]

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### ORDER

Upon consideration of Defendant's Motion to Stay Consideration of the "Conditional Motion of Indicated Refiners to Intervene," the submissions of the plaintiff and the potential intervenors in connection therewith, and the entire record in this case, it is, by the Court, this 5th day of December, 1982.

ORDERED that Defendant's Motion to Stay Consideration of the "Conditional Motion of Indicated Refiners to Intervene" is granted; and it is further

ORDERED that the Indicated Refiners' Conditional Motion to Intervene is stayed until further order of this Court, and no responses to that Motion shall be made by the parties until 20 days after service of notice by this Court that such responses shall be filed; and it is further

ORDERED that there shall be no filing of briefs *amicus curiae* or responses thereto by the potential intervenors or the parties, respectively, concerning remedial issues until further order of this Court.

/s/ Thomas A. Flannery
United States District Judge

## APPENDIX IV

BEFORE THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Civil Action No. 78-1035

UNITED STATES OF AMERICA,
*Plaintiff*,

v.

EXXON CORPORATION,
*Defendant*.

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[Filed Apr. 11, 1983]

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ORDER

This 11th day of April, 1983, it is hereby ORDERED that the Motion of Indicated Refiners for Reconsideration of Denial of Intervention filed on April 6, 1983 is granted, that the Conditional Motion of the Indicated Refiners filed on November 24, 1982 is granted, and that Champlin Petroleum Company, Tenneco Oil Company, Pennzoil Company, Tosco Corporation, Ashland Oil, Inc., Texas City Refining, Inc., and the American Petroleum Refiners Association may intervene in this action solely for purposes of appeal on the remedy issue.

/s/ Thomas A. Flannery
THOMAS A. FLANNERY
United States District Judge

## APPENDIX V

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Civil Action No. 78-1035

UNITED STATES OF AMERICA,
*Plaintiff,*

v.

EXXON CORPORATION,
*Defendant.*

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[Filed Apr. 29, 1983]

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MEMORANDUM

On March 25, 1983 this court issued a Memorandum Opinion ("Mem.") disposing of the parties' cross-motions for summary judgment and directing plaintiff Department of Energy ("DOE") to submit a proposed judgment for the court's consideration within fifteen days, with defendant Exxon Corporation ("Exxon") to submit its comments thereon no later than ten days thereafter. DOE submitted its proposed judgment on April 11, 1983. Exxon filed its reply on April 21, 1983.

After the issuance of the Memorandum Opinion several motions to intervene were filed. The motions can be divided into two groups, those by oil refiners, wholesalers and retailers, on the one hand, and those by several States on the other.[1] Both groups focus their attention on

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[1] Each of the motions to intervene is listed in the Order which accompanies this Memorandum. In addition, a group of refiners consisting of Champlin Petroleum Company, Tenneco Oil Company,

the remedy fashioned by the court which directs payment by Exxon of the overcharges into an escrow account at the United States Treasury, to be disbursed to the States in accordance with the procedures of Section 155 of Pub. L. No. 97-377. Mem. at 83-85. The industry applicants contest that remedy, arguing that they were the victims of the overcharges to whom restitution is due. They now seek to intervene solely for the purpose of establishing their right to appeal the remedy question to the Temporary Emergency Court of Appeals ("TECA"). The States, too, seek to intervene solely on the remedy issue, but wish to have the opportunity to comment on the proposed judgment as well.

Both the industry applicants and the States contend that they may intervene as a matter of right under Fed.

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Pennzoil Company, Tosco Corporation, Ashland Oil, Inc., Texas City Refining, Inc., and the American Petroleum Refiners Association (the "Indicated Refiners"), filed a motion for reconsideration of the denial of their earlier motion to intervene. The motion for reconsideration was granted on April 11, 1983.

The "Retailers" appearing in the Order accompanying this Memorandum filed a petition for limited intervention on January 20, 1983, which was denied in the Memorandum Opinion. Mem. at 77 n.56. Unlike the Indicated Refiners, the Retailers have filed no motion for reconsideration. The court, however, will *sua sponte* reconsider its denial of the Retailers' petition for intervention in light of the standards discussed at pp. 3-5, *infra*. The court will, however, afford DOE and Exxon an opportunity to respond to the petition for intervention, to address in particular the question of whether the Retailers ought to be allowed to intervene not only on behalf of themselves but also as representatives of a class of similarly situated retailers.

Finally, the States of Arkansas, Delaware, Iowa, Kansas, Louisiana, North Dakota, Rhode Island and Texas have moved to intervene and have also moved that the court certify a class consisting of all States not otherwise represented by counsel before this court. The court finds, however, that the proposed class is not so numerous as to make joinder impracticable, in view of the narrowness of the issue on which the States are being allowed to intervene, and so will deny the motion for class certification.

Rule Civ. Pro. 24(a)(2), claiming an interest in the subject matter of this action, namely, in the distribution of the fund created by restitution of the overcharges by Exxon. In the alternative, the applicants seek permissive intervention under Fed. Rule Civ. Pro. 24(b)(2).

Both DOE and Exxon have opposed the various motions of the States to intervene. DOE argues that the motions are untimely and will result in undue delay and confusion. Exxon argues that the States have no legally protected "interest" in this action and that, in any event, the States' interest, if any, is adequately represented by DOE. In addition, DOE and Exxon have opposed the motion of one of the industry applicants, arguing that it is untimely and that the interests of this applicant are adequately represented by the one group of Indicated Refiners whose motion to intervene has been granted.

The court finds that the applicants for intervention are entitled to intervene as a matter of right under Fed. Rule Civ. Pro. 24(a)(2).

Rule 24(a)(2) sets forth four prerequisites to intervention of right: (1) an interest in the subject matter of the action; (2) possible impairment as a practical matter of the ability to defend that interest if intervention is denied; (3) inadequate representation of that interest by existing parties; (4) a timely application for intervention.

The 'interest" to be protected is not so narrowly defined as Exxon would have it. The present language of Rule 24 was designed to liberalize the right to intervene in federal actions, *United States v. AT&T*, 642 F.2d 1285, 1291 (D.C. Cir. 1980), and is to be "primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Smuck v. Hobson*, 408 F.2d 175, 179 (D.C. Cir. 1969), quoting *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967).

In this case, the industry applicants—refiners, wholesalers, and retailers—all allege that they, not the ultimate consumers of petroleum products, bore the burden of Exxon's overcharges and are entitled to restitution. For purposes of deciding whether to allow intervention the court must accept a party's well-pleaded allegations as true, and cannot look behind those allegations to reach the merits of the applicant's claims as a basis for denying intervention. *United States v. AT&T*, *supra*, 642 F.2d at 1291. The industry applicants have properly pleaded an interest in the overcharges by Exxon, and so have satisfied the "interest" test. The States, for their part, obviously have a strong interest in defending before this court and on appeal this court's decision that they, on behalf of their citizens, are to receive restitution of the overcharges.

Furthermore, the States have adequately demonstrated that representation of their interest by DOE may be inadequate. The applicant need only show that representation of his interest "may be" inadequate, and the burden of making that showing is "minimal." *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972). DOE never pursued or even suggested the remedy fashioned by this court. The States' defense of their interest may therefore be more vigorous than would that of DOE.

Finally, timeliness is a requirement committed to the discretion of the district court in light of all the circumstances. *Piambino v. Bailey*, 610 F.2d 1306 (5th Cir. 1980), and may be proper even after a judgment has been entered. *Nevilles v. EEOC*, 511 F.2d 303 (8th Cir. 1975). In this case the court, at the request of DOE and Exxon, had stayed earlier motions to intervene by industry applicants pending resolution of the issue of Exxon's liability for the overcharges. The interest which the States seek to defend is in the overcharge escrow fund to be created pursuant to the Memorandum Opinion.

Accordingly, the applications for intervention, all filed within a few weeks of that Memorandum Opinion, cannot be denied as untimely.

In order to avoid undue delay, however, the scope of the applicants' intervention shall be limited to the question of the proper remedy in this case. The district court has the power to limit intervention. *Smuck v. Hobson*, *supra*, at 179-80; *cf. United States v. AT&T*, *supra*, at 1291 (the limited nature of the intervenor's interest determines the scope of intervention). Moreover, in this case none of the applicants has requested the right to intervene with respect to the underlying substantive issues of Exxon's liability for the overcharges. Instead, each seeks to advance its claim to restitution of those overcharges. Accordingly, intervention by the industry applicants shall be solely for the purpose of arguing the remedy issue on appeal before the TECA. The States may intervene for the same purpose but they will be permitted, in addition, to submit comments on DOE's proposed judgment and Exxon's reply thereto. The States' comments shall be limited, however, to ensuring disbursement of the funds in accordance with the procedures described in the Memorandum Opinion, and shall not address the several substantive arguments on the merits by which Exxon contends that the amount of its liability ought to be reduced.

An appropriate Order accompanies this Memorandum.

/s/ Thomas A. Flannery
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Civil Action No. 78-1035

UNITED STATES OF AMERICA,
*Plaintiff,*

v.

EXXON CORPORATION,
*Defendant.*

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[Filed Apr. 20, 1983]

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ORDER

In accordance with the foregoing Memorandum, it is, by the court, this 29th day of April, 1983,

ORDERED that the following applications for intervention in this case shall be, and hereby are, granted:

A. *Industry Intervenors*

(1) Marathon Petroleum Company, Mobil Oil Corporation, and Murphy Oil Corporation;

(2) The National Oil Jobbers Council and the "Jobbers' Group";

B. *States*

(1) Alabama, California, Illinois, Michigan, Mississippi and Ohio;

(2) Arkansas, Delaware, Iowa, Kansas, Louisiana, North Dakota, Rhode Island and Texas;

(3) New York;

(4) Commonwealth of Pennsylvania;
and it is further

ORDERED that the motion by Arkansas, Delaware, Iowa, Kansas, Louisiana, North Dakota, Rhode Island and Texas for certification of a class consisting of all States not otherwise represented by counsel before this court is denied; and it is further

ORDERED that the Industry Intervenors may intervene solely for the purpose of appeal on the issue of the proper remedy in this case; and it is further

ORDERED that the States may intervene only for the purpose of appeal on the issue of the proper remedy in this case and for the purpose of submitting comments to this court on the parties' proposed judgment, which comments shall be limited to ensuring disbursement of funds from the escrow account described in this court's Memorandum Opinion of March 25, 1983 in accordance with the procedures described therein; and it is further

ORDERED that the States shall submit their comments on the proposed judgment no later than May 9, 1983; and it is further

ORDERED that plaintiff and defendant shall not later than May 9, 1983 respond to the petition for limited intervention filed January 20, 1983 by Luther Griffin t/a Palmer Highway Exxon, *et al.* (the "Retailers").

/s/ Thomas A. Flannery
United States District Judge

## APPENDIX VI

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Civil Action No. 78-1035

UNITED STATES OF AMERICA,
*Plaintiff,*

v.

EXXON CORPORATION,
*Defendant.*

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[Filed May 5, 1983]

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ORDER

Upon consideration of the Motion By The States of Arkansas, Delaware, Iowa, Kansas, Louisiana, North Dakota, Rhode Island and Texas ("the States") to Add the State of West Virginia as an Intervenor-Plaintiff, the Memorandum of Points and Authorities In Support thereof, and all opposition thereto, it is this 5th day of May 1983 hereby

ORDERED that the Motion of the States to add the State of West Virginia as an Intervenor-Plaintiff shall be, and hereby is, granted; and it is further

ORDERED that the State of West Virginia may intervene only for the purpose of appeal on the issue of the proper remedy in this case and for the purpose of submitting comments to this Court on the parties' proposed judgment, which comments shall be limited to en-

suring the disbursement of funds from the escrow account described in this Court's Memorandum Opinion of March 25, 1983 in accordance with the procedures described therein; and it is further

ORDERED that the State of West Virginia shall submit its comments on the proposed judgment no later than May 9, 1983.

/s/ Thomas A. Flannery
United States District Judge

## APPENDIX VII

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Civil Action No. 78-1035

UNITED STATES OF AMERICA,
*Plaintiff,*

v.

EXXON CORPORATION,
*Defendant.*

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[Filed May 5, 1983]

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ORDER

This matter is before the court on three motions to intervene. Upon consideration of the motions, and in accordance with the reasons expressed in this court's Memorandum of April 29, 1983, it is, by the court, this 5th day of May, 1983,

ORDERED that the motion to intervene of Consumers Power Company, Hudson Refining Company, Inc., U.S. Oil and Refining Company, and Gladieux Refinery, Inc., is granted; *provided*, that said intervention shall be solely for the purpose of appeal on the issue of the proper remedy in this case; and it is further

ORDERED that the motions to intervene of the State of Minnesota and the State of New Jersey are granted; *provided* that said intervention shall be only for the purpose of appeal on the issue of remedy in this case and

for the purpose of submitting comments to this court on the parties' proposed judgment, which comments shall be limited to ensuring disbursement of funds from the escrow account described in this court's Memorandum Opinion of March 25, 1983 in accordance with the procedures described therein; and it is further

ORDERED that the States of Minnesota and New Jersey shall submit their comments on the proposed Judgment no later than May 9, 1983.

/s/ Thomas A. Flannery
United States District Judge

## APPENDIX VIII

Marathon Petroleum Company is a wholly owned subsidiary of Marathon Oil Company, which is in turn a wholly owned subsidiary of United States Steel Corporation.

The subsidiaries and affiliates (not wholly owned) of Marathon Petroleum Company are:

Adela Investment Company, S.A.
Altos Hornos de Vizcaya, S.A. (AHV)
Arctic LNG Transportation Company
Assoc. Manganese Mines of South Africa, Ltd.
Associated Ore & Metal Corporation, Ltd.
Athlone Prospecting & Development Corporation, Ltd.
Avsteel SWA, Ltd.
Badger Pipeline Company
Bartow Chemical Products
Blue Grass Phosphate Company
Brazaco-Mapri Industries Metalurgicas S.A.
Century IV Associates
Chrome Deposit Corp. (Court Holdings J.V.)
City Point Oil Terminal, Inc.
CLAM Petroleum Company
Clean Air, Inc. Joint Venture
Compagnie Miniere de l'Ogoorie (Comilog)
Companhia Meriodional deMineracao
Companhia Siderurgica Paulista "Cosipa"
Cook Inlet Pipe Line Company
Deepsea Ventures, Inc.
Deutsche Transalpine Olleitung GmbH
ECOL Beverage Company of Texas
Explorer Pipeline Company
Feralloys, Ltd.
FHS Automotive Parts Manufacturing Ltd.
FHS Stahlverformung GmbH
First National Bank (Albion, PA)
Fort Meade Chemical Products

Globe Oil Company, U.S.A.
Gravcap, Inc.
Green Bay Terminal Corporation
Industria de Tubos y Perfiles, S.A. (Intupersa)
ITW-Mapri
Jupiter Mining and Prospecting Co. (Pty.) Ltd.
Kappa Mining & Prospecting Co., Ltd.
Kenai LNG Corporation
LaPointe Iron Company
Les Enterprises du Lac Lucault, Inc.
Live Oak Uranium Operations
Locap, Inc.
Loop, Inc.
Mecania Walsywa, Ltda.
Merinds Mineracao
Mineracao Buritirama Ltda.
Mineracao Carajas, Ltda.
Mineracao Maraba, Ltd.
Mineracao Xingu, Ltda.
Minerales Ordaz C.A.
Mobile (I-65) Superstructure—Joint Venture
Morrison-Knudsen, Fishback & Moore
Natkin and Company
Navios Shipholding, Inc.
Navios Corporation
Navios Ship Management Services, Inc.
Northern Tier Pipeline Co.
Oasis Oil Company of Libya, Inc.
Ocean Mining Associates—Joint Venture
Oil Insurance Limited
Oil Insurance Ltd.
Oresteel Investments (Proprietary), Ltd.
Paschen Contractors—Morrison-Knudsen
Petroleum Terminals, Incorporated
Pilot Oil Corporation
Platte Pipe Line Company
Polar LNG Shipping Corporation
Prieska Copper Mines (Pty.) Ltd.

P.T. Pacific Nikkel Indonesia
RMI Company
Rockland Joint Venture (Cost-Sharing)
Russell Stewart Oil Company
SID-BEC-Normines, Inc.
Sigma Mining & Prospecting Co. (Pty.) Ltd.
Societe Des Mines De Fer De Guinee Pour L'Explora
Des Monts Nimba (Mifuergui Nimba)
Soc. Italiana per L'Oleodotto Transalp., S.p.A.
Tenneco/USS Chemicals Joint Venture
Termerid Mineracao, SA
Ternionoss Acciai Inossidabili—S.p.A.
Tilden Iron Mining Company
Torremco Soc. Min. E. Com. Ltda.
Transalpine Finance Holdings, S.A.
Transalpine Olleitung in Osterreich GmbH
U-Save, Inc.
USS MaxTech Company, Inc.
USS MaxTech Company, Ltd.
USS MaxTech Company (Japan), Ltd.
USS-OCF-W&M Joint Venture
USS Technology (Japan), Ltd.
West Shore Pipeline Company
The West Union Canal Company
Wolverine Pipe Line Company
Zeerust Chrome Mines, Limited
Zuari Agro Chemicals Ltd.

## APPENDIX IX

Mobil Oil Corporation is a wholly owned subsidiary of Mobil Corporation which is publicly held. Listed below are the affiliates and subsidiaries of Mobil Corporation, Mobil Oil Corporation, and their affiliates and subsidiaries which are or may be publicly held. For purposes of this list only companies in which a five percent (5%) or greater interest is held are considered.

NAME OF COMPANY

AB Djurgardsberg
Abu Dhabi Petroleum Company Limited
Ace Polymer Co., Ltd.
Adria-Wien Pipeline Gesellschaft m.b.H.
AIMCO (ALPHA) Shipping Company
AIMCO (Blasbjerg) Limited
AIMCO (OMEGA) Shipping Company Ltd.
Aircraft Fuel Supply B.V.
Airtankdienst Koln
AK Chemie GmbH
AK Chemie GmbH & Co KG
Akauma Rekisei Kogyo Kabushiki Kaisha
Alexandroupolis Petroleum Installation S.A.
Allied Asphalts Limited
Alpa Alet Ve Dayanikli Tuketim Mamulleri Pazarlama A.S.
Altona Petrochemical Company Limited
Alyeska Pipeline Service Company
Ammenn GmbH
Ankara Gaz Satis Anonim Sirketi
Arabian American Oil Company
Arabian Energy Company Limited, The
Arabian International Maritime Company Limited
Arabian International Maritime Company
The Arabian Petroleum Supply Company (S.A.)
Arabian Shipping & Trading Company S.A.

Arabian Trading Company S.A.
Aral Aktiengesellschaft
A/S Fjellvegen
A/S Kongens Plass I
A/S Moretral
The Associated Octel Company Limited
Associated Octel Company (Plant) Limited
ATAS-Anadolu Tasfiyehanesi Anonim Sirketi
Atlas Sahara S.A.
Australian Synthetic Rubber Company Limited
Autobahn-Betriebe Gesellschaft m.b.H.
Aviation Fuel Services Limited
Aygaz Anonim Sirketi
B.V. Beheersmaatschappij MOBEM
Basrah Petroleum Company Limited
Bataan Refining Corporation
Bayerische Erdgasleitung GmbH
Bin Sulaiman Mobil Towers
Bayerische Mineral Industrie A.G.
Beer GmbH
Beer GmbH & Co. Mineralol-Vertriebs—KG
Bostadsrattsforeningen Basunen, Malmo
Bostadsrattsforeningen Forarsatet, Orby
Bostadsrattsforeningen Silverskatten, Trelleborg
Bostadsrattsforeningen Skepparegarden, Norrkoping
Brazos Heights Housing Incorporated
Brussels Airfuels Service S.C.
Buffalo River Improvement Corporation
Canner's Steam Company, Incorporated
Cansulex Limited
Canyon Reef Carriers, Inc.
Cartoenvases Valencia, S.A.
Carton de Colombia, S.A.
Carton de Venezuela, S.A.
Cartones Nationales, S.A.
Celmisia Shipping Corporation
Celulosa y Papel de Colombia, S.A.

Central African Petroleum Refineries (Pvt) Limited
Central Kagaku Kabushiki Kaisha
Cercera S.A.
Changi Airport Fuel Hydrant Installation Pte. Ltd.
Chuo Nenryo Gas Kabushiki Kaisha
Colombianos Distribuidores de Combustibles, S.A. (CODI)
Colombianos Forestadores, S.A.
Colonial Pipeline Company
Comet-Brennstoffdienst GmbH
Commercial Polymers Pty. Ltd.
Commodore Maritime Company, S.A.
Compagnie Africaine de Transport Cameroun
Compagnie D'Entreposage Communautaire
Compagnie Rhenane de Raffinage
Compagnie Senegalaise des Lubrifiants (C.S.L.)
Compania Colombiana de Empaques Bates, SSA
Compania Colombiana De Forestacion S.A.
Compania de Lubricants de Chile Limitada (Copec-Mobil Ltda.)
Compania Mexicana de Especialidades Industriales, S.A. de C.V.
Consortium Raymond Duez
Constructora Calle 70, S.A.
Cook Inlet Pipe Line Company
Corrugadora de Carton, S. A.
Cyprus Petroleum Refinery Limited
D. Muhlenbruch GmbH
D. Muhlenbruch GmbH & Co. KG
Dai Nippon Jushi K.K.
Dearborn Land Company
De. Ba. S.p.A.—Industria Petrolifero Deposito di Bari
Depot Petrolier de Mourepiane
Depot Petrolier du Gresivaudan
Depot de Petrole Cotiers
Depots Petroliers de La Corse (DPLC)
Deutsche Pentosin-Werke GmbH

Deutsche Transalpine Oelleitung GmbH
Dicomi S.r.l.
Dixie Pipeline Company
Drivmedelscentralen AB
Dukhan Services Company
East Japan Oil Development Company Ltd.
Eastern Lease Company Ltd.
East Texas Salt Water Disposal Company
Emoleum (Asphalts) Limited
Entrepot Petrolier de Chambery
Entrepot Petrolier de Dijon
Entrepot Petrolier de Mulhouse (E.P.M.)
Entrepot Petrolier de Nancy
Entreprise Jean Lefebvre
Erdgas-Verkaufs-Gesellschaft mbH
Erdoel-Lagergesellschaft mbH
Erdoel-Raffinerie Neustadt GmbH & Co. oHG
Erdoelbetrieb Reitbrook
Erdoelraffinerie Gesellschaft mbH in Liquidation
Etablissments Bouthenet
Ets. Le Goff
Ets. R. Saillard
Faavang Autoverksted A/S
FACEL
Fairwind Maritime Company, S.A.
Falconbridge Limited
Felix Oil Company
Fibil, S.A.
Fibras Internacionales de Puerto Rico, Inc.
Filtros De Costa Rica S.A.
Finsbury Printing Limited
Fountain Garage (East Park) Ltd.
Fountain Garage (Meadowhead) Ltd.
Fountain Garage (Mercury) Ltd.
Fountain Garage (Newbury Park) Ltd.
Fountain Garage (Stirchley) Ltd.
Frome-Broken Hill Company Proprietary Limited

Fruehmesser Mineraloelhandels GmbH & Co. KG
Fruehmesser GmbH
Fuso Operations Kabushiki Kaisha
Futuro Enterprises (Christchurch) Ltd.
Futuro Homes (N.Z.) Ltd.
Gatwick Refueling Services Limited
Gaz Aletleri Anonim Sirketi
Geomines-Caen
Geovexin
Ghana Bunkering Services Limited
Goteborgs Branslesortering AB
Groupement Immobilier Petrolier G.I.P.
Groupement Petrolier Aviation G.P.A.
Groupement Petrolier De Brest (GPB)
Handelmaatschappij Hugenholtz & Co. B.V.
H. van der Heijden Service Stations B.V.
Heizoel-Handelsgesellschaft mbH
Hellas Gas Storage Company S.A.
Home Counties Petroleum Products Limited
Hormoz Petroleum Company
Hydranten-Betriebs-Gesellschaft, Flughafen Frankfurt
Imbert G. Distribution De Produits Petroliers
Inmunizadoras Unidas, S. A.
Industria De Carbon Del Valle Cauca, S.A.
Industria Interamericana De Filtros Ltda. (INTERFIL)
Iranian Oil Participants Limited
Iranian Oil Services (Holdings) Limited
Iranian Oil Services Limited
Iraq Petroleum Company, Limited
Iraq Petroleum Pensions Limited
Iraq Petroleum Transport Company Limited
Iside, S.p.A.
Istanbul Petrol ve Makine Yaglari Limited Sirketi
Japan Airport Fueling Service Co. Limited
J.E.C.O.P.
K.K. Sankyo Plastics
K.K. Toresen

Kanto Kygnus Sekiyu Hambai K.K.
Kanto Oil Pipeline Co., Ltd.
Kawasaki Kygnus Sekiyu Hambai Kabushiki Kaisha
Keihin Kygnus Sekiyu Hambai Kabushiki Kaisha
Keiyo Sea-Berth Company, Limited
Kettleman North Dome Association
Klaus Koehn GmbH
Klaus Koehn GmbH & Co. Mineráloel KG
Kobe Port Service Kabushiki Kaisha
Kurt Ammenn GmbH & Co. K.G.
Kygnus Ekika Gas Kabushiki Kaisha
Kygnus Kosan Kabushiki Kaisha
Kygnus Sekiyu Kabushiki Kaisha
Kyokyto Petroleum Overseas, Ltd.
Kyokuto Sekiyu Kogyo Kabushiki Kaisha
Les Supermarches De Cote D'Ivoire
Likit Petrol Gazi ve Yakit Ticaret A.S.
Loba Chemie Gesellschaft mbh
Lubricantes del Sur, S.A.
Madeleine Mines Ltd.
Marcaux & Cie
Matco Tankers (U.K.) Limited
Maury Manufacturing Company, Inc.
McIntyre Mines Limited
McIntyre Mines (Australia) Pty. Ltd.
McIntyre Mines (Nevada) Ltd.
Mediterranean Refining Company
Meentzen & Franke GmbH & Co.
Mertl GmbH
Mobil Ami, S.A.
Mobil Atlas Sociedad Anonima de Capital Variable
Mobil Comercio, Industria e Servicos Ltda.
Mobil Gaz-Mobil Petrol Gazlari Anonim Sirketi
Mobil Korea Lube Oil Industries Inc.
Mobil Motor Rest AG
Mobil Nile Oil Company
Mobil Oil Gabon

Mobil Oil Ghana Limited
Mobil Oil Maroc
Mobil Oil Nigeria Limited
Mobil Oil Nord-Africaine
Mosul Petroleum Company Limited
Motel Rest SA
Mt. Marrow Blue Metal Quarries Pty.
Near East Development Corporation
Neptune Bulk Terminals (Canada) Ltd.
New Zealand Refining Company Limited, The
New Zealand Synthetic Fuels Corp. Ltd.
New Zealand Synthetic Fuels (Housing) Corporation Limited
Nichimo Oil (Bermuda) Co., Ltd.
Nichimo Sekiyu Seisei Kabushiki Kaisha
Nippon Unicar Company Limited
Norddeutsche Erdgas-Aufbereitungs GmbH
Nordic Storage Company Ltd.
Nottingham Gas Limited
Nuova Europetrol S.p.A.
N.V. Rotterdam-Rijn Pijpleiding Maatschappij
N.V. Socony-Standard-Vacuum Oil Company
Occidental de Empaques, Ltda.
Octel Associates
Octel S.A.
Oilkol (Proprietary) Limited
Oil Service Company of Iran (Private Company)
Oldenburgische Erdoel Gesellschaft mit beschrankter Haftung
Olympic Pipe Line Company
Osage Pipe Line Company
P.T. Arun Natural Gas Liquefaction Company
P.T. Berau Coal
P.T. Stanvac Indonesia
Paloma Pipe Line Company
Pars Investment Corporation
P.6—Groep B.V.

Perretti Petroli S.p.A.
Petrocab
Petrogas Processing Ltd.
Petroleum Development (Cyprus) Limited
Petroleum Refineries (Australia) Proprietary Limited
Petroleum Services (Middle East) Limited
Petroleum Tankship Company Inc.
Petromin Lubricating Oil Company
Petromin Lubricating Oil Refining Company
Petromin-Mobil Yanbu Refinery Company Ltd.
Pipe Line Banal de La Goulette
Plegadizos para la Industria S.A.
Poly Oil Chimie (P.O.C.)
Qatar Petroleum Company Limited
Qualbank, Inc.
Rainbow Pipe Line Company, Ltd.
Reforestadora Andina, S.A.
Reforestadora del Cauca, S.A.
Rhodes Petroleum Installation S.A.
Rivers Court Estates, Limited
Rohol-Aufsuchungs Gesellschaft mbH
Samarco (Alpha) Shipping Company
Samarco (Beta) Shipping Company
Sanwa Kasei Kogyo Kabushiki Kaisha
Sarni S.p.A.
Saudia Arabian Maritime Company
Saudi Can Company, Ltd., The
Saudi Chemical Industries Company Limited
Saudi Maritime Company Ltd.
Saudi Tankers Limited
Saudi Yanbu Petrochemical Company
Schubert Kommanditgesellschaft
Segher de Mexico, S.A. de C.V.
Seibu Kygnus Sekiyu Hambai Kabushiki Kaisha
SENERCO
Seram Societa per Azioni (S.p.A.)
Sierra Leone Petroleum Refining Company Limited, The

Smoky River Coal Limited
Smoky River Investments Limited
Sociedad Calle 67, Ltda.
Sociedade Portugal Marrocos SARL
Societa Italana per l'Oleodotto Transalpino, S.p.A.
Societe Africaine de Raffinage
Societe Alfred Ott & Cie
Societe Belge de Transport par Pipeline S.A.
Societe Camerounaise des Depots Petroliers (S.C.D.P.)
Societe Camerounaise Equatoriale De Fabrication
De Lubrifiants "S.C.E.F.L."
Societe Civile de Mustapha
Societe Civile Immobiliere Courcelles-Etoile
Societe Civile Immobiliere de Construction de 34 Avenue
du General Leclerc a Boissy-St-Leger
Societe Civile Immobiliere de Construction
"La Residence Brune"
Societe Civile Immobiliere du 10 Bd.
de la Republique A La Garenne-Colombes
Societe Civile Immobiliere Kleber-Etoile
Societe Civile Immobiliere La Fontaine Saint Lucien
Societe Civile Immobiliere Mobil
Societe Dahomeenne d'Entreposage de
Produits Petroliers
Societe d'Armement Fluvial et Maritime "SOFLUMAR"
Societe de Construction & de Gestion CB 12
Societe de Distribution Castelroussine (SODICA)
Societe de Gaz D'Oceanic (SOGADOC)
Societe de Gestion des Stocks Petroliers de Cote D'Ivorie
Societe de Manutention de Carburants
Aviation (S.M.C.A.)
Societe de Manutention de Carburants
Aviation Dakar-Yoff
Societe de Manutention de Carburants
Aviation de Tahiti (SOMCAT)
Societe de Maperialx d'Etancheite Pour
Le Entreprises (Meple)

Societe d'Entreposage de Bobo-Dioulasso (S.E.B.)
Societe d'Entreposage d'Hydrocarbures
de Bingo (SEHBI)
Societe d'Entreposage de San Pedro (SESP)
Societe d'Entreposage Petrolier au Burundi
Societe d'Habitations a Loyer Modere
de la Seine Maritime
Societe des Bitumes et Cut-Backs du Cameroun
Societe Des Huiles Lemahieu
Societe de Pipe-Line Sud-Europeen
Societe Francaise Stoner-Mudge
Societe Gabonaise d'Entroposage
de Produits Petroliers
Societe Gabonaise de Raffinage
Societe Industrielle des Asphaltes et Petroles
de Lattaquie (Syrie) S.A.
Societe Jean Roussel S. A.
Societe Ivoirienne de Fabrication
de Lubrifiants (S.I.F.A.L.)
Societe Ivoirienne de Raffinage
Societe Mauritanienne d'Entreposage
de Produits Petroliers
Societe Malienne D'Entreposage (SME)
Societe Nationale de Raffinage (Sonara)
Societe Nouvelle pour l'Epuration des Huiles
de Transformateurs—Septra
Societe Pizo De Formulation De Lubrifiants
(PIZOLUB)
Societe Tahitienne de Depots Petroliers
Societe Tchadienne D'Entreposage de Produits Petroliers
Societe Togolaise d'Entreposage (STE)
Sonarep (South Africa) (Proprietary) Limited
SONEX
South African Oil Refinery (Proprietary) Limited
South Saskatchewan Pipe Line Company
South West Africa Road Binders (Proprietary) Limited
Strafjord Transport A.S.

Sydney Metropolitan Pipeline Pty. Ltd.
Syria Petroleum Company Limited
T.R. Miller Mill Company, Inc.
Tanklagergesellschaft Koln-Bonn
Tecklenburg GmbH
Tecklenburg GmbH & Co. Energiebedarf K.G.
Texoma Pipe Line Company
Thailand Lubricant Products Limited
Thailand Solvent Products, Ltd.
Thums Long Beach Company
T. M. Duche Co., Inc.
Toa Nenryo Kogyo Kabushiki Kaisha
Tohko Plastics Co., Ltd.
Tonen Energy International Corp.
Tonen Maintenance Kabushiki Kaisha
Tonen Sekiyu Kagaku Kabushiki Kaisha
Tonen Tanker Kabushiki Kaisha
Tonen Technology Kabushiki Kaisha
Total Centrafricaine de Gestion (TOCAGES)
Toyoshina Film Co., Ltd.
Tradewind Maritime Co., S.A.
Transalpine Finance Holdings S.A.
Transalpine Oelleitung in Oesterreich
Gesellschaft m.b.H.
Trans-Arabian Pipe Line Company
Transgas Umschlags-Lager-Und Transport
Gesellschaft MbH
Turkish Petroleum Company Limited
Twifo Oil Plantations Ltd.
UBAG Unterflur Betankungsanlage
Flughafen Zurich
Union Grafica, S.A.
United Kingdom Oil Pipelines Limited
W.A.G. Pipeline Pty. Ltd.
Wako Kasei Kabushiki Kaisha
Wakohjushi Kabusiki Kaisha
Walton, Gatwick Pipeline Company Limited

Werner Weidermann Mineraloelvertrieb G.m.b.H.
Western Platinum Ltd.
West Shore Pipe Line Company
Wilhelm Mertl GmbH & Co. KG
Wolverine Pipe Line Company
WSG, Warmservice Gmbh
Wyco Pipe Line Company
Wymondham Oil Storage Co., Limited
Zaire Mobil Oil
Zaire Services Des Entreprises Petrolieres

## APPENDIX X

Murphy Oil Corporation, a Delaware corporation, is publicly held. Listed below are all parent companies, subsidiaries (except wholly owned subsidiaries) and affiliates of Murphy Oil Corporation.

Ozark Fuels Corporation
Butte Pipe Line Company
Collins Pipeline Company
T & M Terminal Company
Murphy Oil Company, Ltd.
Ocean Drilling & Exploration Company
Odeco Towing Services Pty.
Ben Odeco (Bermuda) Limited
Australian Odeco Pty. Limited
Ben Odeco Limited
Sub Sea Offshore (B) Berhad
Strongwork Diving (Saudi Arabia) Ltd.
Sub Sea Dolphin A/S
Lancer Services, Inc.

## APPENDIX XI

The following is a list of the affiliates and subsidiaries (except those wholly owned) of Ashland Oil, Inc.

Allemania Chemical Company
American Syn-Fuels, Inc.
A M International, Inc.
Arch Mineral Corporation
Ashland Chemical Italiana S.p.A.
Target Chemicals, Limited
Ashland Coal, Inc.
Etablissement Locab
South Point Ethanol Company
Super Mom's Kitchens Company
Wipe It Off, Inc.
Ashland Industrial Corporation
Ashland Tri-State Recreation Association, Inc. (ATRA)
Associated Grocers of Iowa Cooperative, Inc.
Boyle County Industrial Foundation
Business Development Corporation of Kentucky
Business Development Corporation of North Carolina
B.V. Ashland-Suedchemie v/h Necof
Campbellsville-Taylor County Foundation
Commonwealth Oil Refining Company, Inc.
Concrete Products, Inc.
CIC Cosmetics International Corp.
Datacare, Inc.
Devon Chemicals, Inc.
Digital Application, Inc.
D M I Furniture, Inc.
The Environmental Health Association of the Carbon Black Industry, Inc.
Equal Opportunity Finance, Inc.
Atlas Pallet, Inc.
Commonwealth Lumber Company
Mt. Vernon Plastics Corporation
Ohio Falls, Inc.

Progress Supermarket, Inc.
R/T International Technologies, Inc.
Erie Lackawanna Inc.
Farmers Union Grain Terminal Association
G A C Corporation
Gravcap, Inc.
Greenville Industrial Development Co.
Hahn, Inc.
Heat Transfer Research, Inc.
Iberia Ashland Chemical S. A.
Industrial Development Corporation of Florida
Israel, State of
K D I Corp.
Kyline, Inc.
K & R Corporation
Locap Inc.
Loop Inc.
Melamine Chemicals, Inc.
Minnesota Pipe Line Company
Motel Properties, Incorporated
The Ocean Corporation
Oil Companies Institute for Marine
Pollution Compensation, Limited
Oil Insurance Limited
Orbitex, Inc.
Petroleum Club of Houston
Princeton Electronic Products, Inc.
Riverside Metal Products, Co.
Ronson Corporation
Rusco Industries, Inc.
Saudi Industrial Resins Limited
Service Stations Properties, Inc.
Seventy Sidney Corporation
Shippers & Receivers Co-op
Southeastern Investment Trust
Southern States Morganfield Co-op
S P H Hotel Company
SuperAmerica of Florida, Inc.

Tecumseh Pipe Line Company
Terex Corporation
Tygart Valley Development
United Carbon India Limited
Weseca Development Co.
Wicks Companies, Inc.
Applied Chemical Products (Pty) Ltd.
Applied Agricultural Products (Pty) Ltd.
Applied Foundry Products (Pty) Ltd.
Applied Industrial Products (Pty) Ltd.
Chematron Products (Pty) Ltd.
Ashland-Avebene S. A.
Ashland Chemical Italiana SpA.
Ashland de Mexico S. A. de C. V.
Ashland Resinas Sinteticas, Ltds.
Ashland-Suedchemie-Kernfest GmbH
Ashland-Suedchemie-Gremolith AG
George Hantos & Co. OHG
Kernfest-Webac, A.B.
Oleotecnico, S.A.
Arch Mineral Corporation
Medicine Bow Coal Company
Energy Development Co.
Crescent Petroleum Company
Ashland Oil (Nigeria) Company
Integon P & C Corporation
Delmar Plaza Associates
500 Cary Corporation
Travelers Inns of Charlotte, Inc.
Travelers Inns of Winston-Salem, Inc.
Travelers Inns of Wytheville, Inc.
Resource Sciences-Arabia Ltd.
Resource Sciences Gulf Limited
Williams Brothers Iran Consulting Engineers
Resources Sciences Malaysia Sdn. Bhd.
WICMAP Transport Pty. Ltd.
Williams Brothers Malaysia Sdn. Bhd.
Drew Ameroid Italiana S.r.l.
Pantry Pride, Inc.

## APPENDIX XII

The following is a list of the affiliates and subsidiaries (except those wholly owned) of Pennzoil Company:

National Transit Company (Pennsylvania)
The Eureka Pipe Line Company
Pennzoil (U.K.) Limited (United Kingdom)
Proven Properties Inc.

## APPENDIX XIII

Tenneco Oil Company is a wholly owned subsidiary of Tenneco, Inc. The following is a list of the subsidiaries and affiliates of Tenneco, Inc. except for those wholly owned.

Poclain S.A. (France)
Compania Tecnico Envasadora S.A.
Kern River Gas Supply Corporation (Delaware)
Kern River Service Corporation (Delaware)
Monroe Auto Pecas S.A. (Brazil)
Tenneco Automotive Foreign Sales Corp. Limited (Jamaica)
Collins Pipeline Company (Delaware)
Kern River Canal and Irrigating Company (California)
Alcan Ekco Limited (United Kingdom)
A/S Haustrup-Ekco Aluminium-Emballage (Denmark)
Toyo Ekco Company, Ltd. (Toyo Ekco Kubushiki, Kaisha) (Japan)
Skogstra A/S Norway
T & M Terminal Company (Delaware)
Tenneco Insurance Ventures, Inc. (Delaware)
FC Marine Inc. (Delaware)
Mistal, Inc. (Delaware)
TENN-USS Chemicals Finance Corporation (Delaware)
Tenneco Oil Company of Nigeria Unlimited (Nigeria)
Tenngasco Gas Gathering Company (Delaware)
HT Gathering Company (Delaware)
Oasis Pipeline Company (Delaware)
Sara Gretes Cafeteria AB (Sweden)
Adela Investment Company S.A. (Luxembourg)
Omni-Pac Gmbh (Germany)
Omni-Pac S.A.R.L. (France)
P.P.M. Guindastes Hidraulicos S.A. (Brazil)
S.A. Paper Chemicals (Proprietary), Limited (South Africa)
Case Vibromax Gmbh (Germany)
Case Vibromax Gmbh und Co. (Germany)

Vibromax France SARL (France)
Vibromax SCI (France)
Case Poclain Gmbh & Co. (Germany)
Depositas Del Norte, S.A. (Spain)
Albright & Wilson (Australia) Ltd. (Australia)
Albright & Wilson Match Phosphorous Co. Ltd. (United Kingdom)
Akulu Marchon (PTY) Ltd. (South Africa)
Akulu Chemicals (PTY) Ltd. (South Africa)
Marchon-Paragon Holdings (PTY) Ltd. (South Africa)
Marchon-Paragon Sulphonation (PTY) Ltd. (South Africa)
Universal Chemical Contractors (PTY) (South Africa)
Polyphosphates Inc. (Philippines)
Albright, Morarji and Pandit Limited (India)
Arndale Fuels Ltd. (United Kingdom)
Bracey Petroleum Products Ltd. (United Kingdom)
Butler Oil Products Ltd. (United Kingdom)
Tees Storage Limited (United Kingdom)
Intertractor Viehmann Gmbh & Co. (Germany)
Stoco Mutual Water and Sewer Company (California)

## APPENDIX XIV

Tosco Corporation does not have a parent company or any affiliates or subsidiaries that are not wholly owned.